IN THE COURT OF APPEALS OF IOWA

No. 3-1040 / 12-2022
Filed January 9, 2014

CHRISTOPHER T. WALTERS,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Boone County, Steven J. Oeth, Judge.

A postconviction relief applicant who previously pled guilty appeals from a district court order summarily dismissing his application. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Vidhya K. Reddy, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Katie Fiala, Assistant Attorney General, and Adria Kester, County Attorney.

Heard by Vogel, P.J., and Mullins and McDonald, JJ.

MULLINS, J.

Christopher T. Walters appeals from the district court's summary dismissal of his application for postconviction relief following his plea of guilty to sexual abuse in the third degree. He argues under Iowa Code section 822.2(1)(d) (2013), newly-discovered exculpatory evidence—the victim's recantation of her statements to law enforcement—requires this court to reverse the summary dismissal and allow the postconviction claim to proceed. The State responds that a claim of newly-discovered evidence cannot be the basis for a postconviction-relief action where the conviction was entered following a guilty plea. We affirm.

I. Background Facts and Proceedings.

In June 2000, Walter's eleven-year-old, mentally-delayed stepsister, F.S., reported to law enforcement that Walters engaged in sexual conduct with her. The State charged Walters with sexual abuse in the second degree. A medical examination revealed no physical evidence of sexual abuse. During a custodial interview with law enforcement, Walters confessed he had sexual contact with F.S. on or about the time F.S. described. Walters pled not guilty and filed a motion to suppress the confession. However, before the hearing on the motion to suppress, Walters decided to plead guilty to the reduced charge of sexual abuse in the third degree.

During the plea colloquy, the district court inquired whether the minutes of testimony accurately described the events. Walters responded, "Yes, pretty much." The court further asked, "On or about April 22 of this year here in Boone

County did you engage in a sex act with the eleven-year-old girl involving contact between her mouth and your genitals?" Walters responded, "I guess." In relevant part, the following exchange also occurred:

> THE COURT: Okay. So let me ask you again then. Mr. Walters. Do you feel forced or pressured into pleading guilty here today? THE DEFENDANT: No.
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> THE COURT: Do you feel any pressure from me to plead guilty? THE DEFENDANT: No.
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> THE COURT: Do you feel any pressure from your attorney? THE DEFENDANT: No.
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> THE COURT: Do you feel any pressure from the county attorney? THE DEFENDANT: No.
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> THE COURT: Have you had time to give this thought? THE DEFENDANT: Yeah.
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> THE COURT: Is this your own free and voluntary decision to plead guilty? THE DEFENDANT: Yeah.
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> . . . .
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> THE COURT: And knowing that, do you still want to plead guilty? THE DEFENDANT: Yeah.
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> THE COURT: Are you satisfied with the advice and the professional work Mr. Nalean has done for you as your attorney? THE DEFENDANT: He's done better than I—than I expected. Meaning for me being counseled by an attorney, you know, it could have been worse for me. But, you know, he's—he's done the best he could. And I have no—no problems with the way he's counseled me.
>
> THE COURT: Okay. Are you satisfied with him as your lawyer then? THE DEFENDANT: Yes, I am.
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> . . . .
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> THE COURT: Would you then tell the Court your final decision. To the charge of sexual abuse in the third degree, do you wish to plead guilty or not guilty? THE DEFENDANT: Guilty.

On September 25, 2000, the court accepted the plea and sentenced Walters to a term of imprisonment not to exceed ten years. Walters filed no post-plea motions and no direct appeal.[1]

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[1] Walters left prison in 2004.

On March 16, 2012, Walters filed an application for postconviction relief based on "evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." Iowa Code § 822.2(1)(d). Walters' application included a statement from F.S. recanting her original report to law enforcement. F.S.'s handwritten statement reads in its entirety:

> I am [F.S.].
> I was told by my Mother to accuse my brother of sexual contact so she would be mad at me [sic] and I did when I was 13 years old. This is a lie it never happened. Chris Walters never touched me or had sexual assault [sic].

Walters also filed affidavits from his wife, Tania, and F.S.'s aunt stating they witnessed her recantation on June 13, 2011. Tania asked F.S. on that date to write the handwritten statement, and F.S. agreed.

The State moved for summary dismissal of the application, which the court granted, finding under *State v. Speed*, 573 N.W.2d 594 (Iowa 1998), a claim of newly-discovered evidence cannot be the basis for postconviction relief when the applicant previously entered a plea of guilty.

II. Standard of Review.

Our review of a district court's summary dismissal of an application for postconviction relief is for correction of errors at law. *DeVoss v. State*, 648 N.W.2d 56, 60 (Iowa 2002). The district court may grant a motion for summary dismissal where "there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Iowa Code § 822.6. Disposition under this section is analogous to the summary judgment procedure in Iowa Rules of Civil Procedure 1.981-83. *Manning v. State*, 654 N.W.2d 555, 559

(Iowa 2002). On such motion, "the moving party has the burden of showing the nonexistence of a material fact and the court is to consider all materials available to it in the light most favorable to the party opposing summary judgment." *Id.* at 560. A genuine issue of material fact exists if reasonable minds could draw different inferences and reach different conclusions from the undisputed facts. *Id.*

III. Analysis.

Iowa Code section 822.2 identifies a number of situations under which a convicted defendant may apply for postconviction relief, including when the claim is based on "evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." Iowa Code § 822.2(1)(d). Section 822.3 provides all applications for postconviction relief must be filed within three years of the conviction. Iowa Code § 822.3. "However, this limitation does not apply to a ground of fact or law that could not have been raised within the applicable time period." *Id.* Walters claims that the victim's recantation is newly-discovered evidence that requires his conviction to be vacated in the interest of justice, and that such ground of fact could not have been raised within the three-year limitations period. The State argues that newly discovered evidence should never be grounds for postconviction relief following a guilty plea.

The district court, in granting summary dismissal, found newly-discovered evidence could not be the basis for a postconviction claim when Walters gave a knowing and voluntary guilty plea. In so finding, the district court applied *State v.*

Speed, 573 N.W.2d 594, 596 (Iowa 1998), where a defendant directly appealed from denial of a motion in arrest of judgment following his plea of guilty. Speed argued he would not have pled guilty if he had known about exculpatory evidence, newly discovered after he made his plea. *Speed*, 573 N.W.2d at 596. The Iowa Supreme Court declined to allow Speed to withdraw his guilty plea, finding, "[I]t is well settled that a plea of guilty waives all defenses or objections which are not intrinsic to the plea itself." *Id.* (internal citations and quotations omitted). Therefore, newly-discovered exculpatory evidence does not provide grounds to withdraw a guilty plea "unless it is intrinsic to the plea itself." *Id.* (internal quotations omitted).

Speed argued the exculpatory evidence influenced his guilty plea because the amount of evidence available against a defendant affects a defendant's decision to plead guilty. *Id.* However, the court found, "This argument fails to distinguish between a defendant's tactical rationale for pleading guilty and a defendant's understanding of what a plea means and his or her choice to voluntarily enter the plea." *Speed*, 573 N.W.2d at 596. The court further found, "Any subsequently-discovered deficiency in the State's case that affects a defendant's assessment of the evidence against him, but not the knowing and voluntary nature of the plea, is not intrinsic to the plea itself." *Id.*

The *Speed* court cited *State v. Mattly*, 513 N.W.2d 739 (Iowa 1994), where the defendant failed until just before sentencing to inform her trial counsel about circumstances that might have permitted a coercion defense. There, the Iowa Supreme Court held the district court did not abuse its discretion in denying

Mattly's motion to withdraw her guilty plea when her plea was knowing and voluntary. *Mattly*, 513 N.W.2d at 596. The *Speed* court also cited *State v. Alexander*, 463 N.W.2d 421 (Iowa 1990), where a defendant appealed from the denial of his motion for new trial after he pled guilty. Alexander learned, subsequent to his plea, of a witness who could provide him a defense and moved for new trial based on newly-discovered evidence. *Alexander*, 463 N.W.2d at 421-22. The Iowa Supreme Court affirmed the denial of the district court's motion. Discussing an amendment to the rule regarding motions for new trial, it stated:

> [T]he legislature did not intend to give admittedly guilty persons the unfettered right to recant their admission and proceed to trial on the ground of newly discovered evidence or any other ground not intrinsic to the plea. Notions of newly discovered evidence simply have no bearing on a knowing and voluntary admission of guilt.

Id. at 423. Each of these cases noted the well-settled principle that a plea of guilty "waives all defenses or objections which are not intrinsic to the plea itself." *See Speed*, 573 N.W.2d at 596; *Mattly*, 513 N.W.2d at 740; *Alexander*, 463 N.W.2d at 422. Thus, *Speed*, *Mattly*, and *Alexander* ruled newly-discovered evidence may not be adduced in order to withdraw a guilty plea.

Nevertheless, Walters contends these cases are distinguishable from his own because they were direct appeals from post-trial motions to withdraw guilty pleas under Iowa Rule of Criminal Procedure 2.24(2) and (3), while his claim is for postconviction relief under Iowa Code section 822.2. Rule 2.24(3) provides motions in arrest of judgment based on guilty pleas "shall be granted when upon the whole record no legal judgment can be pronounced." Iowa R. Crim. P. 2.24(3)(a). Iowa Code section 822.2 provides a remedy where "[t]here exists

evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence *in the interest of justice*." Iowa Code § 822.2(1)(d) (emphasis added).

Walters insists the inclusion of "in the interest of justice" indicates "[p]ostconviction relief under Iowa Code section 822.2(1)(d) is broader than the relief available under a Rule 2.24(3) motion in arrest of judgment." Because his claim is one of "actual innocence," Walters argues it is in the interest of justice to reverse summary dismissal and reinstate his postconviction action based on the alleged newly-discovered evidence. Walters argues that nothing in the text of section 822.2(1)(d) bars the availability of postconviction relief based on newly-discovered evidence in the post-guilty-plea context.

The State argues, on the other hand, that we "should hold that following a guilty plea, a claim of newly discovered evidence cannot be raised as a ground for postconviction relief. A contrary holding would impair the finality of guilty pleas, disappointing the State's legitimate expectations and weakening the incentive to engage in the plea bargaining process." We note the legislature easily could have excluded from section 822.2(1)(d) a postconviction relief claim challenging a guilty plea, but it did not. Further, our case law recognizes the possibility of a postconviction challenge to a guilty plea.

Our supreme court in *Alexander* rejected Alexander's direct appeal challenging a guilty plea based on a claim of newly-discovered evidence but in dicta stated, "The remedy Alexander seeks is available to him in the form of postconviction relief. *See* Iowa Code § 663A.2(4) (1989)." *Alexander*, 463

N.W.2d at 423. The 1989 version of Iowa Code section 663A.2(4) is identical to current Iowa Code section 822.2(1)(d). The court did not elaborate further on how the postconviction mechanism could provide relief or what proof might be necessary to support such relief. Walters also cites *State v. Edman*, 444 N.W.2d 103 (Iowa Ct. App. 1989), in which we suggested newly-discovered evidence could be the basis of postconviction relief in a case where the applicant previously pled guilty and the court is "satisfied that a true injustice has been perpetrated." 444 N.W.2d at 106. In that particular case, however, the applicant did not claim he was actually innocent. *Id.*[2] We have not found a published decision in which an Iowa court considered newly-discovered evidence to support a postconviction claim seeking to invalidate a guilty plea.[3]

The case of *Grissom v. State*, 572 N.W.2d 183 (Iowa Ct. App. 1997), however, gives us guidance. "We follow the same analysis to resolve section 822.2(4) claims as we do to resolve claims of a new trial based on newly discovered evidence." *Grissom*, 572 N.W.2d at 184.[4]

> With newly discovered evidence claims, the claimant must establish: (1) the evidence was discovered after the verdict; (2) the evidence could not have been discovered earlier in the exercise of due diligence; (3) the evidence is material to the case and not

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[2] Walters also cites to an unpublished decision, *Mayberry v. State*, No. 11-1932, 2013 WL 2371213 (Iowa Ct. App. May 20, 2013), in which the applicant argued Iowa has an "actual innocence" exception to the three-year statute of limitations under Iowa Code section 822.3. In *Mayberry*, we assumed without deciding that Iowa had such an exception, found the applicant did not prove he was actually innocent, and dismissed his claim. *Id.* at *4.

[3] However, in *Lewis v. State*, we rejected a postconviction claim based on newly-discovered evidence following the applicant's guilty plea. No. 07-0553, 2008 W.L. 141155 (Iowa Ct. App. January 16, 2008) (unpublished).

[4] Iowa Code section 822.2(4) (1997) is identical to the present section 822.2(1)(d).

> merely cumulative or impeaching; and (4) the evidence probably would have changed the result of the trial.

Id. Postconviction relief applicant Grissom asserted a change in her medical status constituted newly-discovered evidence requiring the court to allow her to withdraw her plea in order to seek more lenient sentencing. *Id.* This court found the change in medical condition did not constitute newly-discovered evidence and affirmed dismissal of the application on that ground. *Id.* at 184-85. Therefore, under *Grissom*, we must apply the same analysis to resolve postconviction-relief claims based on newly-discovered evidence as we use to resolve direct appeals on post-trial motions to withdraw pleas.

The court in *Grissom* also noted, however:

> We have carved out one exception to the rule that newly discovered evidence must be evidence which existed at the time of the trial proceeding. It is found in extraordinary cases when an "utter failure of justice will unequivocally result" if the new evidence is not considered or where it is no longer just or equitable to enforce the prior judgment. *Benson,* 537 N.W.2d at 762-63. Notwithstanding, the exception does not apply to the facts of this case because its conditions cannot be met.

572 N.W.2d at 185. That exception for cases when an "utter failure of justice will unequivocally result" is instructive to the meaning of the term "in the interest of justice" as it appears in section 822.2(1)(d).

The State urges us to rule that in all cases of a guilty plea, a claim of newly-discovered evidence cannot ever be raised as a ground for postconviction relief. The legislature could have, but did not however, except guilty pleas from postconviction relief, and our supreme court in *Alexander* acknowledged that postconviction relief was available to challenge a guilty plea. *See* Iowa Code §§ 822.2(1)(d), 822.3; *Alexander,* 463 N.W.2d at 423. Accordingly, we cannot

accept the State's position and rule there are no circumstances under which a postconviction applicant might be able to successfully challenge a guilty plea. Furthermore, such a far-reaching policy determination is beyond what we are called upon to decide.

Walters has apparently assumed that alleged newly-discovered evidence which he believes would satisfy section 822.2(1)(d) automatically exempts him from the statute of limitations in section 822.3. The three-year statute of limitations for postconviction cases "does not apply to a ground of fact or law that could not have been raised within the applicable time period." Iowa Code § 822.3. Walters focuses on the alleged recantation as the "ground of fact."

His claimed "actual innocence" is, however, the ground of fact which he is actually raising to challenge his conviction. The alleged recantation is the evidence he relies upon to support his factual claim that he is innocent and should have his conviction vacated. In effect, he is attempting a backdoor approach to setting aside his guilty plea and then presumably hoping the recantation is sufficient to avoid a new conviction. That new evidence is not, however, the "ground of fact" contemplated in section 822.3. The ground of fact is his actual innocence. That is a ground of fact that he could have asserted during the limitations period, but which he voluntarily and intelligently relinquished when he both confessed to law enforcement and pled guilty. Thus, his actual innocence is not a ground of fact that could not have been raised within the statute of limitations period.

Even if we were to accept Walters's argument and conclude that the ground of fact is the alleged recantation, Walters must jump the "in the interest of justice" hurdle of section 822.2(1)(d). His argument is focused on his now-claimed innocence. The statutory requirement is "in the interest of justice," not "in the interest of the defendant." The State prosecuted Walters, and he voluntarily and intelligently pled guilty after having confessed his guilt to law enforcement. When he pled guilty, he "waive[d] all defenses or objections which [were] not intrinsic to the plea itself." *Speed,* 573 N.W.2d at 596. His guilty plea put the "lid on the box" and ended his claim of innocence. *See State v. Kyle*, 322 N.W.2d 299, 304 (Iowa 1982). An alleged recantation does not un-waive his defenses or objections and does not remove the lid from the box. We hold that "in the interest of justice" requires that a conviction based on a guilty plea that satisfied all legal requirements cannot be successfully challenged in a postconviction proceeding by claiming an alleged victim recantation is new evidence.[5]

IV. Conclusion.

We conclude Walters's claim that an alleged recantation by the victim is a new "ground of fact" which could not have been raised within the three-year statute of limitations is misplaced. The ground of fact is his claim of actual innocence. The alleged recantation is merely evidence in support of his postconviction claim. Walters waived his claim of innocence when he pled guilty. Even if the recantation could be considered a ground of fact in avoidance of that

[5] We need not decide whether any other facts or circumstances might be grounds for relief under section 822.2(1)(d).

statute of limitations, justice requires that a conviction based on a guilty plea that satisfied all legal requirements cannot be successfully challenged in a postconviction proceeding by an applicant claiming an alleged victim recantation is new evidence.

AFFIRMED.